91-1708

Supreme Court, U.S.
FILED
MAR 4 1992
OFFICE OF THE CLERK

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1991

ROBERT A. LESLIE, Petitioner

v.

UNITED STATES COURT OF APPEAL
NINTH DISTRICT, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
TO THE
UNITED STATES SUPREME COURT
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ROBERT A. LESLIE
Consul for petitioner
In Propria Persona
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QUESTIONS FOR REVIEW

1. Are the safeguards of the safe streets act 18 USC, §2516-18, prohibiting illegal wiretap recordings taken without a court order, and requiring the sealing of the recordings in the judges presence applicable to state municipal court misdemeanor cases?

2. Are fabricated tape conversations, using synthesized speech, admitted in evidence in a criminal prosecution, a violation of amendments VI, and XIV of the Federal Constitution?

3. Is the erasing of a tape recording containing exculpatory evidence, so that it cannot be played to the jury, a violation of the U.S. Supreme Court Decision of Brady vs Maryland?

4. Is a review of probable cause applicable in the presence of repeated perjured testimony of the affiant, during

the trial, and in the sentencing hearing.

5. Is demonstrated conflict of interest of defense consul, who withheld proof of defendants innocence from the police a sixth amendment violation of the federal constitution, based on the US Supreme Court Decision of Strickland vs Washington?

6. Is the fact the operatives of the Board of Medical Quality Assurance admitted their intent, not the doctors to obtain illegal drugs, and who gave false histories, and who had physical findings justifying the prescription of these drugs, a ground for reversal under the US Supreme Court Decision of Sherman vs the United States

7. Is the city prosecutor, who obtaining a continuance over the objection of consul, to allow an important witness to testify, then not producing the witness in a trial,

violating the speedy trial provision of the fourth amendment of the Federal Constitution?

8. Is proven perjured testimony of states witnesses, grounds for impeachment of their testimony, when defense consul fails to object, if incompetence, and conflict of interest of defense consul are demonstrated, a violation of the Sixth Amendment of the Federal Constitution?

9. Are the guidelines of the US Supreme Court Decision, in the People vs MacDonald 465 US 1. Applicable in requesting habeus corpus relief for failure to provide a speedy trial?

PARTIES TO THIS PROCEEDING

1. City Prosecutor, Long Beach Municipal Court 400 W. Broadway, Long Beach, Ca. 90001.

2. Presiding Judge, Long Beach Municipal Court, 415 W Ocean Blvd.,

Long Beach California. 90802

3. Court of Appeal 300 S Spring St. Los Angeles Ca. 90012.

4. California State Supreme Court, 300 South Spring St. Los Angeles Ca. 90012.

5. Federal District Court, 600 Spring Street, Los Angeles Ca. 90012.

6. United States Court of Appeals for The Ninth Circuit, P. O. Box 487, San Francisco, Ca. 94101.

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OPINIONS OF OTHER COURTS

All of the issues presented for review have been submitted to the California State Supreme Court, after being presented to the Appellate Department of the Los Angeles Superior Court, and the Court of Appeal. The Federal questions sought to be reviewed were presented in the original habeus corpus petitions submitted to the appellate department of the Los Angeles Superior Court. The Supreme court and Court of Appeal rejected the petitions without

Comment and the Superior Court merely stated, "petitioner failed to make a prima facie case for relief." Three proposed judgments, and three replies were given in the Federal District Court, and in response to the third petition the Honorable Judge Kronenberg vacated his order on June 2, 1991. This opinion was overruled by judge Hill, August 16, 1991, and this ruling was appealed to the court of Appeal, who sustained Judge Hill's position. A petition for certificate of probable cause being denied on January 13, 1992, and a petition for reconsideration being denied on February 10, 1992. A transcript of Judge Kronenberg's decision is affixed to the appendix, along with petitioners request for reconsideration. The reply which caused the honorable Judge Kronenberg to vacate his judgment is summarized in petitioner's statement

of the case.

JURISDICTION

Petition is for a Writ of habeus corpus within the provisions of 28 USC §2254(b), a petition for of a Certificate of Probable cause being denied on January 13, 1992 by the Federal Court of Appeals, and a petition for reconsideration denied on February 10, 1992, summarily and without comment. "An application for a Writ of Habeus Corpus in behalf of a person in custody pursuant to a judgment in a State court shall not be granted unless it appears the applicant has exhausted the remedies available in the courts of that State." Prieser v Rodriguez, 411 US 475,497. This has been done in 10 petitions to The California State Supreme Court.

CONSTITUTIONAL PROVISIONS AND STATUTES

Federal Constitution Amendment IV.

The right of the people to be secure

in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated; and no warrants shall issue, but upon probable cause supported by oath or affirmation particularly describing the place to be searched, and the person or things to be seized.

Federal Constitution Amendment VI

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been ascertained by law; and to be informed of the nature and the cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of consul for his defense.

Federal Constitution Amendment XIV

Nor shall any state, deprive any person of life, liberty, or property without due process of law, nor to deny any person within its jurisdiction the equal protection of the laws.

FEDERAL STATUTES

18 USC 3161, "In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the completion of an offense shall commence within 70 days from the filing date of the information."

USC 18 §3162(a) " If the defendant is not brought to trial within the time limit, the indictment shall be dismissed on motion of the defendant."

18 USC §2515 Whenever any wire or oral communication has been intercepted, no part of the contents of such

communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, or other authority of the United States, a state, or a political subdivision thereof if the disclosure of that information would be a violation of this chapter (18 USCS §§ 2510 et seq.) (1968).

18 USC 2518. (1) Each application for an order authorizing or approving the interception of a wire or oral communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application.

18 USC §3500 All records of government informants must be made available if defense consul requests them for

impeachment purposes.

US SUPREME COURT DECISIONS

Brady v Maryland 373 US at 87. We now hold that suppression by The prosecution of evidence favorable to the accused upon request, violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or the bad faith of the prosecution.

Strickland v Washington, 466 US, 686, 693. Prejudice is presumed when consul is burdened by an actual conflict of interest.

United States v Chronic 466US at 659. states similarly.

Mooney v Holohan, 294 U. S. 103-112 It is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a state has contrived a conviction through the pretense of a trial which in truth is but used as

a means of depriving a defendant of liberty through a deliberate deception of the court and the preservation of testimony known to be perjured. Such a contrivance by the state to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining a like result by intimidation.

Pyle v Kansas 317 US 213 215-216 confirms this opinion.

STATEMENT OF THE CASE

Petitioner was convicted of eight misdemeanor counts of improperly prescribing controlled substances, for a period extending from July to October 1985, being arrested on March 1, 1986. The district Attorney refused to prosecute the case, which was referred to the municipal court, M22-45-65, as

a misdemeanor. Prosecution was delayed over objection of consul on the basis that an important witness was in hospital. Trial was held in October 1986, and a verdict of guilty on eight counts. This was upheld on appeal, August 1988, a request for certification not being filed timely. Petitioner discovered defense consul was criminally involved, withholding proof of innocence from the police, and maliciously excluding reversible errors from the appellate courts. Petitioner filed 10 habeus corpus appeals to the State Supreme Court, via the Court of Appeals. A copy of Judge Kronenberg's decision, the only one passing on the merits, is affixed to the appendix. An updated summary of petitioner's response follows:

STATEMENT OF CASE

ENTRAPMENT

Your statement on page 2, line 8, stating petitioner was convicted of prescribing to persons "not in medical need of them" is in error. The statute states, "a person without pathology or condition." The operatives did demonstrate pathology and condition, which is important because a physician should not be faulted for prescribing for a condition demonstrated on examination, even if it does not bother the operative. Petitioner is a physician with thirty years of experience and three years of training in pharmacology. The operatives had no training or experience in medicine, or undercover operations. They did not display the relevant symptamology of habitual users, because they did not know the relevant symptamology, Transcript p 199, line

21. The operatives denied under oath being addicted to a controlled substance, or representing herself to be such, showed no medical indications as such, and were not on any medication. (Transcript P 123 lines 4-12, p131 lines 27-28, p 132 lines 1-7, p 185 lines 21-28, page 186 lines 1-23) (Vol II p 94 lines 16-21, p 108 lines 9-11, p 110 lines 9-13, p 140 lines 17-18, p 141 lines 23-26), and gave no medical indications of being addicts or habitual users. (VOL II p 93, lines 20-27, p 108 lines 9-11, p 110 lines 9-13, p 112 lines 10-14, p 115 lines 20-27, p 137 lines 12-14).

The operatives in carrying out this investigation were instructed not to give any medical indications. (Transcript p 21 lines 17-23, Page 78 Lines 7-11, p 118 lines 1-3 and 19-24) in "working the defendant doctor. P

21 lines 24-28, Page 22 lines 1-3) and merely to ask for certain restricted drugs. (Page 22 lines 24-27, p 78 lines 4-9, page 117 lines 23-28, p 118 lines 1-24) In direct violation of Board of Medical Quality Assurance Regulations, they presented false medical histories, conditions and pathology to the examining doctor. (p23 line 1-28 P 54 Lines 2-28, p55 lines 1-5 and 20-27, p60 lines 3-14, page 61 lines 4-8.) in attempts to induce the doctor to prescribe illegally drugs, and were properly treated for these and other medical problems found by the doctor in his examinations. The agents admitted <u>their intent not the doctors,</u> to have the doctor prescribe illegally (p126 lines 1-6). They gave telephone calls urging the doctor to meet them outside the office when they felt he was" softening" (p 83 lines 5-25, page 90 lines 2-9, p 93 lines

12-28, p 135 lines 11-23), claimed prescriptions had been ordered by other doctors (p122 lines 14-16), pretended anger, and became overbearing in their demands. (p 121 lines 25-28 Page 122 Lines 1-16, Page 137 lines 7-10).

The defendant's good faith was shown by refusing to give drugs requested by the operators (vol 2 p 121 lines 2-8 and 19-20, p 139 lines 9-14, p 76 lines 5-7 gave caution regarding prescription use, Vol II page 39 lines 6-9 P 12 lines 19-24, refused to prescribe the requested drugs, p 22 Line 28, p 23 lines 1-2, page 81 lines 13-18. (Vol II p 56 lines 16-24, p 72 lines 10 through 14, p 80 lines 14-18, p 81 line 1 p 111 lines 13-19, p 144 lines 2-24), and required medical indications to prescribe. (Vol II p 76, lines 5-7.) The defendant consulted authoritative texts before prescribing.

(Vol II p 38 lines 9-21, p 38 lines 26-28, p 39 lines 1-4). Habitual users adhere to one drug or combination of drugs; the operatives obtained different drugs on each office visit. The quantities requested were smaller than those of habitual users. The law recognizes this fact when it states," repeat acts of clearly overprescribing." Appellant was not guilty of this because the same medication was not prescribed twice, and because the quantities prescribed did not exceed PDR guidelines used by the Drug Enforcement Administration to determine overprescribing. They did not display the sedation encountered in habitual users, and they gave false histories and had physical findings justifying the prescribing of these drugs. This situation was discussed and agreed to in principle with Dr. Stanley Walsh

Professor of Cardiology and internal medicine and immunology, of the UCLA medical school, who offered to testify.

SPEEDY TRIAL

Your allegation that petitioner waived time is incorrect. The information is missing from the municipal court files regarding what transpired at these hearings, and defense consul has refused to release the information in this case, and was subsequently sued to provide this information in the Long Beach Superior Court, case No. NC006338. The state bar was contacted and suggested obtaining a court order, so they could take further action. The honorable judge Kronenberg refused to sign this injunction. The petitioner was only present at two of the hearings and could not and did not waive time: the arraignment, and the hearing on May 12, when defense consul obtained a

continuance because the prosecutor changed the order of the charges. After reading your findings of May 17, page 3 lines 3 through 7, petitioner thought the pretrial motions were in your chambers, making a special trip to obtain them, without success. The denial of the right of the accused to be present in all hearings, because he was not advised of them, is in and of itself grounds for habeus corpus relief. (Amsterdam Criminal law 4th Ed. §341) Taylor v. United States 414, US 17 (1973); Tacon v Arizona, 410 US 351.

Your analysis of the United States vs Williams has been superseded in California Courts by the later decision of Owens vs Superior Court, 28 CaL 3d 238. This state Supreme Court Decision qualifies for federal habeus corpus relief on the basis that

petitioner's rights under the fourteenth amendment of the federal constitution were violated. HELD: when prosecutor requests a delay over objection of consul, the prosecutor must show cause of that delay. Prosecution sought delay over objection of consul, because a key witness who was having disc surgery, Marilyn Arreola, could testify. She was never called to testify so he will be unable to meet this test.

DEFENSE CONSUL PERJURY

Petitioner claimed defense consul perjured himself by lying under oath that his strategy was based on fear petitioner would be prosecuted for a felony, when the district attorney had already refused to prosecute the case as a felony, not because of his statement that it was a tactical decision to delay the trial. Defense consul also lied under oath that both sides refused to

plea bargain. Defense consul also lied under oath when he stated witnesses suggested by petitioner were dependent on illegally prescribed drugs. Four of the suggested witnesses were operatives of the Bureau of Narcotic Enforcement, who were investigating the clinic at the same time: Nana Branstuder, Lenore Ortiz, John McClure, and Sally Sullivan. He billed me for interviewing these people; later telephone conversations to them made by petitioner, confirmed they were never called, and charges were filed with the State Bar. Some of their testimony is indicated in the affidavits attached to the last petition. Elizabeth Myers, whose name in included in the last affidavit is not on any narcotic medication whatsoever and would be a very effective witness.

Three of these witnesses presented

themselves to Mr. Raney on the last day of the trial, and were not allowed to testify. A fourth witness, Penny Smith, in whom I had diagnosed a cervical disc when 22 other doctors had failed to do so, flew in from San Francisco to Testify, and was not put on the witness stand; she was not on any medication.

FALSIFICATION OF TAPE RECORDINGS

The petitioner does not question that the board of medical quality assurance made tape recordings of some of the medical conversations, but alleges they had been tampered with by the city prosecutor, so they did not represent an accurate picture of what transpired. The tape copies in my file do not comport with the transcript of the tapes released by the attorney general, or with the tapes played before the jury. During the trial the operatives admitted they

had no independent recollection of what had occurred. The prosecutor also refused to deliver taped conversations containing evidence favorable to the accused: the taped interview with Marilyn Arreola. This evidence must have been very strong because the state decided not to put her on the witness stand as a result of this interview. This withholding of evidence favorable to the accused is reversible error per se. (Brady vs Maryland.) Defense consul was denied the access to the original tape recordings which is reversible error in federal prosecutions. Jencks vs the United States.

IMPROPER DEFENSE CLOSING

A copy of defense consul's closing address was lost by the court reporter but she recalls the closing speech was interrupted by the city prosecutor,

WITNESS PERJURED TESTIMONY

The operatives definately gave perjured testimony. Investigator Voisard, who admitted in petitioner's presence to accepting a bribe, lied to the probation officer that petitioner had been given previous drug counseling; Defense consul then telephoned her, and told her to look up the time and place of the meeting, so that she could be called to testify regarding this. She testified one week later, repeating this lie under oath twice on the witness stand. In the interval, as guardian of the record, she probably removed the tape recordings from their BMQA file, and destroyed all of the records to back up her perjury. The attorney general was shocked to find these records were missing.

Investigator Voisard on p 38 line 5 of the transcript quotes petitioner

as saying I can't find much wrong with you." This is in conflict with the chart and the statement was never made. tr. p 50 line 17. Tr. p 48 line 1 Voisard testified petitioner did not examine her, which is refuted in p 55 lines 20-28, and p 56 line 1. She denied on page 56 line 4 that petitioner had advised her to get a back x-ray in conflict with the chart. On page 187 line 26 Voisard again states she informed the doctor she was breast feeding which is refuted by page 188 line 1. On Page 197 Ms. Voisard advised she was given preluding 2; there is no such drug. On p203, lines 16-20 she testifies she is breast feeding, contrary to the affidavits introduced at the trial.

Investigator Mc Cullough lied under oath petitioner had prescribed doriden which was untrue Page 9, line 21. This is refuted by her testimony on page

16 line 26-2. She testified on page 13 petitioner prescribed phendimetrazine which is refuted by Page 19 lines 23-6 and her affidavits submitted into evidence at the trial. When in fact, the nurse gave the medication to her without the petitioners knowledge, and never saw the patient, causing an erroneous conviction of one of the counts. Detective Hudson lied under oath that the recordings had not been altered, when one conversation had been erased prior to trial, and the transcript of a second tape recording did not comport with the transcript submitted by the attorney general, or the tape played to the jury. The tape submitted to defense consul consisted of syntheticized speech, and was not the petitioner's voice. Notwithstanding this evidence, petitioner was denied an evidence hearing. Hudson also lied

under oath, that informant was reliable and from out of the state, when she was a dope addict, a dope pusher, and the guilty party. Investigator Cassady lied under oath that she received no examination from petitioner, and the appellate court advised petitioner that was why the judgment was affirmed. The court acknowledged a complete examination was in the chart, but that it was a question for the jury who was telling the truth. Discrepancies in the testimony and admissions in cross examination make it obvious petitioner was telling the truth: page 119 line 20 Cassady denied she stated she had a yeast infection which entry was in the seized chart in her own handwriting. Page 120 line 22 she denied being examined. On line 27 she admitted being in three automobile accidents. The chart showed on examination limited

motion of the neck, a likely finding. Page 82 line 4 she states he wrote a prescription that I carried to the front desk which was filled. The prescription is not in the seized records, and the clinic never filled prescriptions which is unlawful. Page 83 line 23 she denied petitioner had ever refused to give her drugs, which is refuted by her pretrial affidavit which showed petitioner had refused her request for doriden and preludin. On page 80 line 23 she stated there was no problem. Page 81, line 1 she stated she liked getting high. This testimony is refuted by the chart, which states in her own handwriting, she had diarrhea, a yeast infection and jet lag. Her conversation on page 81 never took place. Her testimony on page 89 line 22 is refuted by her affidavit, and the seized chart. On Page 102 she admitted having no

experience or training in undercover work line 24. This is in conflict with the affidavit which states she had six months training in undercover work. On page 121 line 16 she denied knowing a Dr. Froelich, yet put this in her chart as the attending physician. On page 122 line 2 she admits she told petitioner she had severe jet lag, but on page 890 line 23 she denied having any problem. Page 126 line 2," My question is, wasn't your frame of mind that you would get him to illegally prescribe to you?" Answer," yes" "and you went there for that purpose." "Yes." On Page 129 line 3 she denied saying she would lose her job without those pharmaceuticals; this is contradicted in her testimony on page 143 line 5. On page 141 line 2 she again lied under oath, "I told him I like getting high" This is refuted by the chart in her

own handwriting. The conversation listed on page 141 never took place. On page 146 she denied three times the telephone conversation took place that was erased by the city prosecutor prior to the trial. In California courts, proof of perjury is sufficient to strike all the testimony of that witness. Witkin points out in EVIDENCE volume IV § 1981," A witness may be impeached by evidence on the non existence of any fact testified to by him." See also §1979, "if the witness admits the inconsistent statement, he is impeached by his own testimony and this may end the inquiry." §1770 states," If a witness is shown to have testified erroneously to any particular relevant matter an inference of

untrustiworthiness may be drawn from the rest of the testimony." On Page 8 you state that inconsistencies are not necessarily proof of perjury. That is not the point; inconsistencies are a basis to strike the testimony of the witness, according to Witkin. It should be pointed out all of the states witnesses were thoroughly coached by the city prosecutor, investigator Cassidy being given $1,000 to testify, by John VanDerlans. With all that coaching and special attention, a truthful witness should be able to give consistent testimony, which is the reason given by Witkin for these statutes.

PROSECUTORIAL MISCONDUCT

Your opinion that accusing appellant of selling speed, and operating a pill mill which are felonies, not in the indictment, and improperly mentioned in a misdemeanor indictment, is not

reversible error is contrary to the opinions of the California State Supreme Court, and qualifies for Federal habeus corpus relief on the basis of denial of due process. (Federal Constitution amendment XIV). People v Musumci 13 CA 2d 354, "manifestly an objection to the testimony in that regard . . . would be pointless. It bore no resemblance to the charge for which appellant was on trial . . ." People vs Cahan 44 Cal 2d 282. No matter how guilty a defendant might be or how outrageous his crime, he must not be deprived of a fair trial." That the questioned testimony was highly prejudicial there could be little doubt. To entertain a contrary view is to ignore human experience, the propensities and passions of people, the course of nature and common sense. People v Kirkes (1952) 39 C 2d 249; People v Duvarney (1941)

43 CA. 2d. 823; People v Robarge (1952) 43 CA 2d 87; People vs. Talle (1952) 111 CA 2d 650 Etc. The case of the United States v Spivey the term "con man" was used implying defendant was a crook in a general way. This is far different from accusing petitioner of selling speed, a schedule II drug, the prescribing or sale of which constitutes a felony, and would inflame a jury, in a misdemeanor trial. You cite Caldwell vs Mississippi to justify improper closing argument. In this case the Supreme Court made note of the fact that detailed arguments at length were made by the State Supreme Court on the merits. Petitioner had no explanation from the state supreme court, whatsoever. Berger v United States 295 U. S. 78, 85-89; Donnelly v DeChristoforo, 416 U. S. 637, 648 n.23 supports petitioner's position.

REBUTTAL

The motion to suppress under 1538.5 is based on the proven perjury on the part of Voisard in the sentence phase of the trial impeaching all of her testimony. The fact that a motion is rejected as untimely does not mean the merits of the situation were considered; they were not. The fact consul withdrew his objection does not prove that it lacked merit. He withdrew the objection on the basis the investigation was conduced under the direction of the Long Beach Police department and not because of the perjured testimony of Voisard. Incompetence of consul is a main argument in this petition. Contrary to your expressed opinion, petitioner believes, and hereon alleges, proven perjured testimony is callous disregard for the truth.

The Opinion of the US Supreme Court

in The United States vs Williams is in conflict with the US Supreme Court decision of US vs Macdonald 465 US 1. It rejects the contention of Williams that a probable change in outcome is a necessary factor. It cited the following reasons for relief in denial of a speedy trial: 1. Interference with liberty whether out on bail or not. 2. Disruption of employment. Employer refused to pay any wages, and petitioner could not seek other employment. 3. Drain of financial reserves; this was extreme. 4. Curtailing of previous associations 5. Obbloqux. 6. Anxiety. It also included time from arrest to indictment which Williams failed to do. The Opinion of Moore vs Arizona (1973) 414 US 25, 38 Led 2d 183 conflicts with the opinion of US vs Williams.

The opinion of Hilliard v Spauding reinforced petitioners argument. The

accused was entitled to evidence regarding a sperm sample. (Brady v Maryland) Petitioner was denied access to Marilyn Arreola's taped interview, and to all the original tapes.

ILLEGAL WIRETAP

The tapes were done by illegal wiretap, without a court order, in conflict with the safe streets act of 1968, 18 USC § 2516-18, which states: 1. A court order or permission from the attorney general must be obtained. 2. The penalty involved must be greater than one year in prison. 3. Maximum duration of wiretap 30 days; petitioners lasted six weeks. 4. Other investigation methods tried and failed. None of there requirements were met. This act superseded the state code provision you cited earlier (Cal Penal Code 631,632,633), and in any case is not applicable because Federal habeus corpus

deals with denial of federal and not state laws. (Amsterdamm's criminal Law 4th Ed. §243 B.) See United States v Donovan, 429 U. S. 413, 423-28 (1977); United States v Kahn, 415 US 143, etc. The state codes cited by you were replaced by the Safe Street act and US Supreme Court Decisions made since passage of that act, make it clear that court intends to enforce this law. This matter was researched prior to submitting the matter to the State Supreme Court for review of his second habeus corpus petition (BO43219). You state in page 11 line 2 of your decision that petitioner did not show facts indicating he was denied a fair hearing. The petition was rejected without any hearing.

Petitioner respectfully disputes your contention that the defendant was predisposed to commit the crimes. See

1B-9B of this petition. The testimony by the prosecution witnesses indicating petitioner was predisposed was perjured.

PREVIOUS CHARGES

The hearing mentioned in the bottom of page six occurred because petitioner reported Investigator Mock to the Bureau of narcotic enforcement for accepting a bribe. Two witnesses testified in the hearing that Mr. Mock had accepted a bribe, and more names were mentioned. The remainder of the complaint stemmed from the operation of a large cocaine syndicate around my house which had been reported to Investigator Mock. They have been trying to drive us out of our home since 1977, because my house is the only property in Orange County with a panoramic view of the ocean, Emerald and Crescent bay, which the syndicate used to import cocaine by sea. Three months after the hearing,

the FBI and South Coast Narcotics staged the largest Drug Bust In California History, Los Angeles Times March 28, 1988, near my home, proving my allegations. The syndicate has made five attempts on my life, repeatedly burglarized by home, destroyed the house and grounds, planted large quantities of trash on my property, poisoned my wife, and attempted to steal my home by a forged trust deed in favor of defense consul, who was criminally involved in this matter.

ATTORNEY MALPRACTICE

In response to the litigation that followed, alleging RICO violations, defense consul unlawfully sold his home, moved twice without leaving a forwarding address, and moved his law practice of many years without leaving a forwarding address, requiring the services of a private detective to locate

him. In the interim the Court of appeal has determined petitioner had a prima facie case of legal malpractice against defense consul, Mr. Raney, overruling his demurrer. Mr. Raney did not answer any allegations of the malpractice suit, and a motion for summary judgment is set for a hearing on March 31, 1992. Mr. Raney has been sued to obtain his motions objecting to the continuances given to the state, NC006338, which is set for a hearing March 12, 1992.

MORE REBUTTAL

In your cited case of United States v N Ferreira-Alameda defendant gave up his rights by waiver, which was not the case here, nor were allegations or perjury and felonious obstruction of justice made against consul.

In the case of United States v Marcello, there was a court order for the wiretap which was not the case with

the petitioner, and this fact is a main ground for habeus corpus.

The case of Caldwell V Mississippi you cited HELD: the prosecution must provide defendant with exculpatory evidence in its possession if defendant asked for it. Petitioner was denied a Copy of the taped interview of Marilyn Arreola, and access to the original tape recordings, notwithstanding a discovery motion of defense consul,and petitions to compel discovery in municipal and Los Angeles Superior courts.

In Forster v County of Santa Barbara there was no telephone surveillance; in petitioners case there was telephone surveillance and no court order. As mentioned earlier, this matter was researched prior to presenting this matter in the Second State Supreme Court Appeal, and the Court refused to grant

petitioner a hearing (BO43219).

ATTORNEY MALPRACTICE

In the opinion of Strickland vs. Washington that you cited the US Supreme Court outlined the requirements of consul: There should be no conflict of interest. Defense consul displayed a conflict of interest when he withheld documentary proof of petitioners innocence from the police, committing a felony: conspiracy to obstruct justice, 18 USC 1679. See additional evidence in support of Writ of Habeus Corpus. A second requirement is that consul keep petitioner informed of developments in the case which he failed to do. Incompetence of consul has been demonstrated by both of these tests.

MISSING WITNESSES

One of the witness who died, Mary Mannake, would have testified as mentioned in the affidavit that Marilyn

Arreola was selling forged prescriptions to all comers for a price without the knowledge of the physicians. A friend of hers, Ethylene Peck, who moved out of the area and could not be located, had knowledge that Marilyn Arreola was wholesaling prescription blanks to dope pushers in the community, and that she saw them writing prescriptions on those blanks. She had other knowledge unknown to the petitioner.

Marienne Belecki was an FBI informant who had useful information. She knew Mr. Lonni was paying regular bribes to Mr. Van derLans, probably around $20,000 or so from information conveyed by detective Hudson. She knew that Charles Bartel, a notorious criminal, used information from Mr. VanderLans to guide the operation of his clinic, which was selling restricted substance in large quantities, and shutting down

his operation when warned by Mr. Van derLans and Mr. Rose, chief of narcotics, of the Long Beach police department. Dr. Bartel left the area when it was getting hot, probably based on information supplied by these two individuals. She knew Mr. Lonni was doing the same thing, that the onset of the prosecution had been delayed six weeks by Mr. VanderLans, so that Mr. Lonni could arrange a vacation so as not to be in the clinic at the time of the raid, and this was confirmed by a detective in the Long Beach Police Department, that a false burglary had been staged in order to cover the sale of at least 3500 prescription blanks to pharmacies in the area, and that Charles Ritchie, of the Bureau of Narcotic Enforcement was selling some of those blanks to pharmacies in the area, and that the FBI was investigating

the matter. Since this hiatus was presented to the prescription blanks delivered to defense consul, this should have some effect on the jury. This information is in the file M22-54-65, which Mr. Raney refuses to release, showing a conflict of interest, because Mr. Lonni and Mr. Bartel are friends of his. Incidentally, in a recent article in the Los Angeles times, it was pointed out that Mr. VanderLans was under investigation for corruption, by the Long Beach Police Department.

ARGUMENT

The opinion of the court of appeal in denying a certificate of probable cause is in conflict with California penal code §1473 granting habeus corpus relief for convictions based on false evidence, which is applicable here, on the basis of due process rights of the Federal Constitution. It is also

contrary to the Supreme Courts decisions regarding the use of illegal wiretap evidence in criminal prosecutions, Katz vs the US and its progeny. Since the operatives admitted their intent and not the doctor's to have his break the law, as Chief Justice Warren pointed out in Sherman vs. United States, 256US 369," to determine whether entrapment has been established a line must be drawn between the trap for the unwary innocent and the trap for the unwary criminal. The intent of the defendant is at issue and the entrapment defense is available only to a person who was instigated, induced or lured by an officer of the law for the purpose of prosecution into committing a crime which he otherwise had no intention of committing. Sorrels vs the United States 287 US 435. United States vs Hodges 480 F.2d 229. Etc.

WHEREFORE petitioner prays that a writ of habeus corpus be issued without further delay, or a certificate of probable cause, or an evidence hearing — be scheduled, or Certiorari be granted.

I, Robert A. Leslie, am the petitioner and have prepared this petition. The information contained there is true of my own Knowledge, except for that alleged on information and belief, and as for this, I believe it to be true. I declare under penalty of perjury the foregoing is correct.

Executed in Irvine, California February 25, 1992.

Robert A. Leslie

Robert A. Leslie

In Pro per:

APPENDIX

PEOPLE OF THE STATE OF CALIFORNIA Plaintiff and Respondent vs. Robert Andrew Leslie, defendant and Appellant, Superior Court No. CRA25087 Long Beach Municipal Court No. M22-45-65 MEMORANDUM JUDGMENT Filed May 18,1988. Judgment is ordered as follows: The judgment is affirmed. Defendant first complains the evidence is insufficient to support his conviction of violating Health and Safety Code sections 11154 and 11156 and Business and Safety Code 725. We Cannot agree.

Health and safety code section 11154 prohibits a doctor from prescribing a controlled substance to any person who is not under the physician's treatment for a pathology or condition. Here Shiela Cassidy (also known as Cassidy or Shiela Stein) testified she met with defendant five times, and although she indicated to defendant she had no medical problems and simply wanted prescriptions for controlled

substances, defendant, without so much as a cursory examination of Cassidy wrote her numerous prescriptions for controlled substances.(SIC) Such testimony was sufficient for the jury to find that the defendant violated Health and Safety Code section 11154. People v Johnson (1980) 26 Cal 3d 557, 562. See People vs Braddock (1953) 41Cal 2d 794,801.

Health and Safety Code Section 11156 States: "No person shall prescribe . . . a controlled substance to an addict or habitual user, or to any person who represents himself as such . . ."

Here, defendant was cited for violating this code on five different occasions with three different witnesses. Again, our review of the testimony presented at trial reveals sufficient evidence for the jury to find that defendant prescribed controlled

substances, who represented themselves as habitual users of the drugs to defendant. (Sic) (Actually operatives denied under oath they represented themselves as habitual users.)

For example, On October 18, 1945, Witness Marcella Voisard asked defendant for a prescription for valium because," she liked taking it." She received not only a prescription for valium, but also another drug. On October 31, 1985, witness Voisard again visited defendant at his office and after announcing she was "there for a refill" received prescriptions for three controlled substances.

On October 31, witness Cassady visited defendant at his office. When defendant asked her why she was there, the witness responded she had no problem, but that she "liked getting high." He responded by giving her prescriptions for

controlled substances on that date and on November 21, 1985 and January 7,1986.

On July 17, 1986 (sic), witness Rochelle McCullough sought from defendant a prescription for the drug doriden (sic) because she liked taking it "instead of drinking alcohol. (She actually received thorazine which was not a controlled substance.)

Again, based on these witnesses' testimony, we find sufficient evidence supports defendant's conviction for violating Health and Safety Code section 11156. People v Barnes (1986) 42 Cal.3d 284, 303.[1]

Business and Professions Code Section 725 prohibits a physician from excessively prescribing drugs. Testimony established that in a two week period, he gave Voisard five prescriptions for

[1] It should be pointed out the citations do not agree with the case law.

controlled substances. (Sic) (Operator Brenda Jackson under two aliases received two prescriptions five weeks apart.) In a six week period he gave Cassidy numerous prescriptions for tranquilizers and amphetamines. (Sic)(two prescriptions were given 6 weeks apart States expert did not say prescribing was excessive.) Again, such testimony was sufficient to establish that defendant violated business and professions code 725 by excessively prescribing drugs to witnesses Cassady and Voisard (Sic). People vs Johnson, 26 Cal 3d at 562.

Defendant next complains that audio tapes of conversations were not authenticated. However, our review of the record reveals that Officer, Gary Hudson, testified he monitored the conversations as they occurred and testified that the cassette copy of

the conversations which was introduced at trial accurately reflected the conversations. Such was sufficient to authenticate the cassette copy. (Sic)

Finally, we conclude that the jury was properly instructed as to the defense of entrapment. (See People v Slatton (1985) 137 Cal.App.3d 487, 491.

Margolis

Woods

(Illegible)

FINDINGS ON A PETITION FOR A WRIT OF HABEUS CORPUS BY A PERSON IN STATE CUSTODY (revised). May 17, 1991. UNITES STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

ROBERT ANDREW LESLIE Petitioner vs.Herbert Malveaux, Probation Officer Respondent; ATTORNEY GENERAL OF CALIFORNIA RESPONDENT. CV 90-3252-IH(K)

On June 22, 1990, petitioner, on probation after his state conviction, filed this petition for a Writ of Habeus Corpus, paying the filing fee. The magistrate called for a response, which was directed to the Long Beach City Prosecutor, rather than the state attorney general. Petitioner filed his amended petition on August 24, and the response was filled on September 17. Petitioner had filed his traverse on September 10. Petitioner also filed two application for temporary restraining

orders relating to revocation of his medical license and narcotics registration, which were denied. The Magistrate issued initial findings on the petition March 26, 1991. Petitioner filed(page 1) two petitions for reconsideration on April 2 and April 4. Because petitioner has more specifically addressed some of the issues he raised previously, the magistrate vacated his earlier findings and now considers the issues presented in the original petition as detailed in the subsequent findings.

The magistrate has read and considered all of the pleadings and relevant exhibits and makes the following findings.

Following as jury trial, petitioner, a licensed physician was convicted of prescribing various controlled substances to persons not in medical need of them.

(Cal. Health and Safety Code, 11154, 11156) and use of diagnostic treatment in an unprofessional manner (bus. & Prof Code Sec. 725). (Resp App. 1, p. 35). He was sentenced to 90 days in Jail, two years formal probation, and a fine of $750. (Resp. App1 p 37)

There is a question of exhaustion of remedies, but in the interest of terminating litigation, we will deal on the merits.

Petitioner makes numerous allegations, including denial of a speedy trial, inadequacy of counsel, prosecutorial misconduct, use of perjured testimony by the prosecution, denial of a hearing on a motion to suppress, fabrication and destruction of tape recordings and use of evidence obtained during an illegal search and an illegal wiretap.

Petitioner's claim that he was denied a speedy trial is without merit. He

bases his claim on both state and federal statutes. Petitioner claimed in his original petition that he was prejudiced because a witness died during the delay prior to trial.

The Complaint against petitioner was filed on April 1, 1986, and trial began in September of that year. (Sic October) Petitioner claims that the prosecution was responsible for most of the delay, and that defense(page 2) had requested only one three-week delay because the city prosecutor changed the order of the charges. (pet. Recon, filed April 2, 1991, pp1-2. A review of the records indicates most of the delay resulted from defense action, and that the petitioner waived time. The only continuance requested by the prosecution was on August 21. (sic) Resp. App. 1, p. 26.) In an affidavit submitted by defense consul, Edwin Raney, it was

explained it was his tactical decision to delay the trial. (Resp. App. 5, p. 2) Petitioner claims that defense consul has perjured himself by making that statement.

Whatever the state law with regard to a speedy trial, there is no per se test to determine when the right to a speedy trial has been violated under federal law. The factors relevant in evaluating a sixth amendment claim are the length of the delay, the reason for the delay, the defendant's assertion of the right, and prejudice to the defendant United States v. Williams, 782 F.2d 1462, 1465 (9th Circ. 1985) Petitioner presents no credible facts to make a showing under any one of these four factors. The record indicates that the delay was only for a few months and that the defense was primarily responsible. Petitioner has not

sufficiently supported the contention made in his original petition that a witness died during the delay. He has failed to explain who the witness was or how his testimony could have helped. Defense consul states in his affidavit that no witnesses died and that he refused to call some witnesses suggested by the petitioner because he felt they would be detrimental to the defense since they were dependent on petitioner for illegally prescribed drugs. (resp. App 5, pp. 3-4) The facts presented indicate that any prejudice to petitioner was minimal and speculative. (page 3

Petitioner makes allegations against trial consul, including malice, conspiracy, failure to move to suppress evidence, making errors in closing argument, refusing to call certain witnesses, failure to properly attack an error in the appellate judgment and

that he attempted to foreclose on petitioner's home.

In order to prevail on a claim of ineffective assistance of counsel, petitioner must demonstrate (1) that counsel's actions were "outside the range of professionally competent assistance," and (2) that he was prejudiced by reason of counsel's actions. There must exist "the reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland v. Washington, 466 U. S. 668, 687-694 (1984)[1].

Petitioner has failed to meet either element of this test. He has made numerous conclusionary allegations

1. The California State Court of Appeal Determined on September 19, 1991 that petitioner had a prima facie case of legal malpractice against defense consul.

but has offered few supportive details. Mere criticism of counsel's trial tactics will not support a claim of ineffective representation. United States v. Ferreira-Alameda, 815 F.2d 1251, 1254 (9th Cir. 1986). After thorough review of the trial transcript, it appears unlikely that petitioner could have obtained a more favorable result. There was direct evidence against him: He was investigated by representatives of the Board of Medical Quality Assurance who went undercover, obtained prescriptions from him, tape recorded their conversations with him. (Sic, only three of 18 conversations were recorded incorrectly) and testified at trial. (For example, see R.T. V. 1, pp.9, 38, 40, 45-47, 80-82,89,94 98,101,120 156,164,181) This review of the trial record reveals that (page 4) counsel competently represented

petitioner's interests, but lost the case because of overwhelming prosecution evidence.

We are unable to review petitioner's claim that defense counsel made errors during the closing argument because it was not reported. (R. T. v.2, p. 165) Petitioner's broad claim that the argument was full of errors and had to be interrupted by the prosecution, confusing the jury". . . (petn. Recon. P. 6) Does not substantiate his conclusive allegation that he was thereby denied a fair trial.

Petitioner alleges that defense counsel erred when he failed to raise on appeal the fact that the states witnesses denied under oath that they represented themselves as habitual users or addicts. The relevance is that petitioner was convicted of violating a statute that makes it illegal to furnish drugs to

such persons. (Cal. Health & Safety Code Sec. 11156, See R.T. v. 2, p. 157. It is apparent after a review of the testimony by the states witnesses that they did not refer to themselves as "habitual users" or" addicts," but did display the relevant symptamology (sic), which is all that is required under the statute. Because there is an adequate basis for the jury to determine that petitioner had violated the statute, counsel cannot be faulted for failing to raise the issue.

Petitioner claims that counsel failed to timely file a request for certification in which he was attempting to substitute the federal standard for entrapment for the state standard. Review of the testimony by the prosecution witnesses indicates that even under the federal standard of entrapment, petitioner would most likely

have been unsuccessful in proving entrapment. It is acceptable for officers or employees of the government to provide an opportunity for the commission of the offense. (page 5). "Entrapment occurs when a defendant who was not disposed to commit the crime does so as a result of the government's inducement. The entrapment defense thus focuses on the intent or predisposition of the defendant to commit the crime." From the testimony of the prosecution witnesses, it was evident the petitioner was predisposed to commit the crime. The witnesses testified that they went to see petitioner at a clinic, requested prescriptions for specific drugs, told him they had no medical need of the drugs, and he provided them with prescriptions. (Sic) It is unlikely the jury would have reached a determination more favorable

to petitioner even under the federal standard.

Petitioner states that the "main reason for federal habeus corpus is malice on the part of defense counsel . . . (Petn for recon. p.7.) Such malice does not provide an appropriate basis for habeus corpus unless it is reflected in counsel's performance. Petitioner claims counsel showed malice when he failed to object to one of the tape recorded conversations used against him which he claims was entirely fabricated." A recording of a conversation which never took place . . ." It is difficult to imagine that a conversation which never took place was recorded. (Sic it did and petitioner has the tape to prove it. The voice on the tape is not petitioners. The Russian's did a lot of this thirty years ago.) This allegation is apparently

based on petitioner's premise that the entire prosecution case was composed of fabricated evidence and perjured testimony, and ". . . the testimony of officer Hudson and all the states witnesses should have been stricken leaving no evidence against petitioner" (petn for Reconsideration p. 12.) There is no credible support for this premise. (Sic). Petitioner submits in a 1984 proceeding before an administrative law judge it was found "by clear and convincing proof" that petitioner(page 6) was suffering from a paranoid disorder. (Petn. for reconsideration p 29.) This may be the source of this claim.

Petitioner alleges that counsel failed to raise the issue of prosecutorial misconduct on appeal, based on comments made during closing argument wherein the prosecutor called him a "pill mill"

and stated he was selling "speed" for profit when petitioner was not charged with the felony of selling "speed".

The prosecutor did refer to a "pill mill" and "speed" (R.T. v.2, pp.) but the catagorization and classification of the drugs had been repeatedly been explained to the jury, (sic, not speed) and the record reveals no basis for confusion as to what petitioner was accused of. (Sic) Even with petitioner's contention that he made no profit dispensing the prescriptions because he was merely an employee, there was no deprivation of any constitutionally protected right in the prosecutors comment that the clinic and the doctor were benefiting from the prescriptions that were dispensed. (rt v.2. p.173).

The prosecutor did not specifically call petitioner a "pill mill" but

indicated that the clinic where petitioner worked was a "pill mill". R.T. v.2, pp. 160,165). The evidence arguably lends support to this characterization, and in argument the state is free to draw any reasonable inference from the evidence adduce at trial. United States v Spivey, 859 F2d 461,466. (7th Circ. 1988). Even improper argument does not necessarily violate a defendant's constitutional rights. See Caldwell v. Mississippi, 472 U. S. 320,328 (1985).

Petitioner's claim that he was convicted because all the prosecution witnesses perjured themselves is totally without merit. In support petitioner cites various instances where the witnesses' testimony was inconsistent. Petitioner testified in his own behalf. (page 7). He attempted to provide explanations for the various

prescriptions and to point out discrepancies in the testimony of the prosecution witnesses. Inconsistencies are not necessarily evidence of perjury. Petitioner's contention that all the states witnesses were lying and it should have been obvious that he was telling the truth ask this court to reweigh the credibility of the witnesses which we cannot do.

Petitioner alleges that part of a tape recording which would have been helpful to the defense was erased and that the original of the tape was destroyed. In this connection, a police officer testified that the original was an old reel to reel tape, and that he copied it onto a cassette so that the original could be reused because they had only five of the old style tapes. He testified that there were no alterations or deletions made to

the tape, and he fully authenticated it. (RT v1 pp 238-9. Petitioner alleges that in the erased portion of the subject tape, an operative told him that she needed the drugs he was prescribing in order to keep her job; the witness denied that she ever made that statement to petitioner.(sic) v1 pp 129,136.) However she did testify he knew she was a flight attendant and allowed the inference that her job was a motivating factor in petitioner giving her the prescriptions: Q: "didn't he say on that occasion because of the nature of your job, I'll do it?" A: "yes, he knew I was a flight attendant yes." (v1 p136).

Petitioner argues that if the tape had contained the statement that he was only giving her the prescriptions to help her keep her job, it would have impeached her to the extend that all

of her testimony would (page 8)would have been stricken and would have provided justification for his actions. (Sic. What about the complete tape conversation erased by the city prosecutor.) Petn. for Recon.,pp 4-5, 9-12) Petitioner is mistaken. Considering the evidence produced petitioner has not provided any facts to show that the alleged missing portion of the tape recording would have been anything but redundant or would have raised a reasonable doubt changing the outcome in any way. Hilliard v. Spaulding, 719 F2d 1443, 1445 (9th Cir. 1983).

Petitioner claims that he was denied a hearing on a motion to suppress the tape recordings. The motion to suppress was made pursuant to Cal. Penal Code Sec 1538.5 was denied as untimely, but then arguments were heard based on Cal.

penal code, 631, 632, and 633 regarding the legality of taping the subject conversations (CT pp 107-110) Because the conversations were taped under the guidance of a supervising police agency (rt v 1, p113) they were ruled admissible. (C.T. pp115). That there was no timely 1535.5 motion made no difference since the matter was actually heard and decided at trial before the evidence was admitted. (Sic) Because there was no successful legal basis for the 1538.5 motion even if it had been timely made, petitioner can show no prejudice that it was denied as untimely. There was no denial of due process. Kealohapauole v. Shimoda, 800 F.2d 1463, 1466 (9th Cir. 1986).

Petitioner alleges that he was denied a hearing on the issue of medical charts seized during an "illegal search" and

that the affidavit of the affiant contained perjured testimony. Petn. for recon., p.7). Petitioner alleges the informant who provided information for the warrant was a dope addict and a drug pusher. The trial judge allowed defense counsel to interrupt the testimony of the police officer who had obtained the warrant in order to inquire into the matter of the affidavit; (sic) thereafter counsel withdrew his objection. (page 9). v1 P240-243) This was an adequate hearing on the issue, since there was obviously no other legal basis upon which to challenge. (Sic). There is a presumption of validity with respect to the affidavit supporting a search warrant. Franks v. Delaware, 438 US 154, 171 (1978). Petitioner has made no showing that the affidavit contained intentional falsehoods. The errors

petitioner alleges are not of significant nature, such as the allegation that he owned the clinic when in reality he was only an employee, and the affidavit alleged commission of a felony when the evidence seized supported only misdemeanor charges. The officer testified at the time the warrant was issued he believed a felony had been committed. (R.T. v.1 p 243) Even if some errors were contained therein, the remaining facts could still give rise to a finding of probable cause. Forester v. Santa Barbara, 896 F.2d 1146,1148 (9th Cir. 1990) There is no showing there was an absence of an objectively reasonable belief in the existence of probable cause. US v. Leon, 468 U. S. 897 (1984) Petitioner has not supported his attack on the integrity of the informant with any facts whatsoever. (sic, how about he repeated

perjury?) In any event, the testimony by BMQA operatives to whom petitioner issued prescriptions provided the bulk of the incriminating evidence against him, and the charts seized pursuant to the warrant merely enhanced their testimony.

Petitioner argues that he was subjected an illegal wiretap. Some of the operatives who obtained prescriptions taped their conversations with him under the supervision of a police officer (without a court order) The judge properly found that there had been no illegal wiretap. R.T. v.1 pp 70-72) Petitioner did not have a justifiable and constitutionally protected expectation of privacy in his conversations with the operatives. Their surreptitious recording of the conversations (page 10) with petitioner in no way violated his 4th amendment

rights.(sic) Forester v. County of Santa Barbara, 896 F2d at 1149. At any rate, since he was able to raise this ground in the state courts and does not indicate any facts to show he was denied a fair hearing (trav. p. 5.) This court will not consider this claim Stone v. Powell 428 U.S. 465 (1976).

There is no merit to any of the grounds urged by petitioner. All issues are readily resolved by the record before this court. (Sic) No evidentary hearing is necessary. The petition should be denied pursuant to 28 U.S.C., 2243.

IT IS THEREFORE RECOMMENDED that the court issue an order denying the petition and dismissing the action.

DATED: this 17th day of May 1991.

John R. Kronenberg
United States Magistrate Judge

PETITION FOR RECONSIDERATION

Writ of Habeus corpus

Petitioner is submitting his request for reconsideration of his petition for a writ of habeus corpus based on the following considerations: 1. On May 17, 1991 the findings of the Honorable John Kronenberg were filed. On May 19 a further declaration in support of the writ of habeus corpus was filed by petitioner. On May 23, 1991 a reply to the findings of May 17 was filed by petitioner. 4. On June 2 a vacation of the proposed judgment was filed by the honorable John Kronenberg. On June 10 your judgment was filed, a carbon copy of the original findings of the Honorable John Kronenberg. 6. Your findings conflict with the opinion of the honorable John Kronenberg, and demonstrate you have

not evaluated the petitions filed on May 19, and 23: a main point of these petitions is the fact the state erased exculpatory evidence from the tapes presented at the trial and fabricated a tape conversation which never took-place, and petitioner now has the tapes to prove this point. This matter could not possibly be settled without an evidentary hearing.

Petitioner respectfully requests a review of your decision in the light of the above facts. Petitioner declares under penalty of perjury the foregoing is correct, and that a copy of this petition has been hand carried to the city prosecutor AT 430 W Ocean Blvd. Long Beach. Executed 6/20/91 at Laguna Beach, Ca.

Roberta. Leslie

Robert A. Leslie

In Pro per:

Raney "maliciously" failed to exercise reasonable care and skill in performing legal services for plaintiff as follows: Raney failed to file for a directed verdict of acquittal on the basis of violation of Leslie's right to receive a trial within 60 days of his arraignment; Raney made no attempt to obtain informant's identity and lied to Leslie that this could not be done; Raney refused to call witnesses who had strong evidence of Leslie's innocence to testify on Leslie's behalf at trial; Raney knew from interviewing one witness hat Marilyn Arreola "was selling forged prescriptions and covering the issuance of these prescriptions by forged chart entries"; Raney failed to make a motion

to suppress under penal code section 1538.5; Raney refused to raise the issue of his failure to move to suppress evidence in the engrossed statement on appeal; Raney's failure to move to suppress, which would have prevented the conviction is gross negligence, and Raney's "malicious refusal to raise the issue (of his gross negligence) in the engrossed statement of appeal, or in the two appeals, made it impossible to raise the issue in postconviction habeus corpus proceedings, requiring appeals to the Federal Courts to have this issue considered." Although Raney was aware that there was perjured testimony at the trial and at the sentencing hearing, Raney failed to file a motion to strike the perjured testimony or to raise this issue on appeal; aside from the perjured testimony there was no other evidence against

plaintiff.

Plaintiff also alleges that other reversible errors occurred, which errors could not be considered by the appellate court because they were not mentioned in the engrossed statement of appeal; Raney lied to Leslie that the appellate court overlooked these reversible errors.

Filed Jan 13, 1992

UNITED STATES COURT OF APPEALS

FOR THE NINTH DISTRICT

ROBERT ANDREW LESLIE,	)	No. 91-56039
	)	DC# CV-90-3252
Peititioner,	)	Central Calif.
	)	
v.	)	Order
	)	
HERBERT MALVEAUX, Probation Officer; ATTORNEY GENERAL of CALIFORNIA	)	
Respondents.	)	

Before: WALLACE, Chief Judge, and SNEED Circuit Judge.

The request for a certificate of probable Cause is Denied.

Filed Feb 6, 1992

UNITED STATES COURT OF APPEALS

FOR THE NINTH DISTRICT

ROBERT ANDREW LESLIE,	)	No. 91-56039
	)	DC# CV-90-3252
Peititioner,	)	Central Calif.
	)	
v.	)	Order
	)	
HERBERT MALVEAUX, Probation Officer; ATTORNEY GENERAL OF CALIFORNIA	)	
Respondents.	)	

Before: WALLACE, Chief Judge, and SNEED Circuit Judge.

The petition for reconsideration is Denied.